

1 Hon. James L. Robart
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8 UNITED STATES DISTRICT COURT
 9 WESTERN DISTRICT OF WASHINGTON
 10 AT SEATTLE

11 ISOMEDIA, INC., a Washington corporation,

12 Plaintiff,

13 v.

14 SPECTRUM DIRECT, INC., a California
 15 corporation; VISTAPRINT USA, INC., a
 16 Delaware corporation; THE LEGAL LEADS
 17 NETWORK, INC., a Florida corporation;
 18 AARP, INC., a Washington, DC non-profit
 19 corporation; PROSPER, INC., a Utah
 20 corporation; COSTA MARKETING GROUP,
 21 INC., a Florida corporation; PARAGON
 22 SOLUTIONS NETWORK, INC., a California
 23 corporation; MEDICAL HAIR
 24 RESTORATION, INC., a Florida corporation;
 GREEN BULLION FINANCIAL
 SERVICES, LLC, a Florida limited liability
 company; EDUCATION DYNAMICS, LLC,
 a Washington limited liability company;
 DIRECT WINES, INC., a Delaware
 corporation; AMERICAN SATELLITE,
 INC., a Nevada corporation; and JOHN
 DOES, I-CC,

25 Defendants.

26 No. 08-CV-1733-JLR

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**VISTAPRINT USA INCORPORATED'S
 28 SURREPLY PURSUANT TO CIVIL RULE
 7(G) REQUESTING THAT THE COURT
 STRIKE PART OF PLAINTIFF'S REPLY TO
 DEFENDANTS' RESPONSE TO PLAINTIFF'S
 REQUEST FOR LEAVE TO FILE
 PLAINTIFF'S SECOND AMENDED
 COMPLAINT**

1 **I. INTRODUCTION**

2 Plaintiff Isomedia improperly utilized the first part of its Reply to Defendants' Opposition
 3 to Isomedia's Motion for Leave to File a Second Amended Complaint ("Reply") (Dkt. 30), as a
 4 surreply to VistaPrint USA, Incorporated's ("VistaPrint's") Motion to Dismiss. (Dkt. 10.)
 5 VistaPrint is therefore filing this surreply pursuant to C.R. 7(g) requesting that the Court strike
 6 page 1 line 22 through page 4 line 12 of Isomedia's Reply.

7 **II. ARGUMENT**

8 Defendants' Opposition to Isomedia's Motion for Leave to File a Second Amended
 9 Complaint narrowly addressed legitimate legal objections to the Second Amended Complaint,
 10 including prejudice resulting from Isomedia's delay in moving to file its Second Amended
 11 complaint, and the futility of Isomedia's proposed amendments. (Opposition to Plaintiff's
 12 Motion for Leave to File a Second Amended Complaint ("Opposition"), at 7:3-28, 8:15-19) (Dkt.
 13 24); *see also DCD Programs Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987) (finding that
 14 leave to amend may be denied based on "bad faith, undue delay, prejudice to the opposing party,
 15 and the futility of amendment.") Rather than respond to these legitimate objections, Isomedia
 16 utilizes the first three and a half pages of its Reply to raise new arguments in support of its
 17 Motion that are unresponsive to Defendants' Opposition.

18 Indeed, the content of Isomedia's Reply appears to address many of the arguments raised
 19 by VistaPrint in its Motion to Dismiss. Isomedia explicitly states in its Reply that "[u]nder the
 20 guise of the pleading requirements of FRCP 8, the Defendants are really asking that Isomedia
 21 make the thousands of spam that Defendants sent a part of the complaint..." (Reply, 4:6-8.)
 22 Neither Isomedia's initial Motion, nor Defendants' Opposition raise the pleading requirements of
 23 Federal Rule of Civil Procedure 8. Rather this argument, as well all of the content on page 1 line
 24 22 through page 4 line 12 of Isomedia's reply, is most properly characterized as a surreply to
 25 VistaPrint's Motion to Dismiss.

26 It is well established that "[t]he district court need not consider arguments raised for the
 27 first time in a reply brief." *Zamani v. Carnes*, 491 F.3d 990, 997 (9th Cir. 2007). And a surreply
 28 of this type is not proper unless requested by the court. *See* 12-C Hon. William W. Schwarzer, et.

al. Rutter Practice Guide: Federal Civil Procedure Before Trial, National Edition § 12:110 (2008) (noting that there is no reply to reply briefs). The Court should therefore strike these arguments as improperly raised in Isomedia’s Reply.

III. CONCLUSION

VistaPrint therefore requests that this Court strike page 1 line 22 through page 4 line 12 of Isomedia's Reply as improper.

Dated: March 11, 2009

/s/Joseph S. Leventhal

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